

## Federal Acquisition Regulation

## 49.603-1

20\_\_\_\_,” or “as soon as you have delivered, including prior deliveries, the following items:” (*list*). Reduce items to be delivered as follows: [*insert instructions*].

[48 FR 42447, Sept. 19, 1983, as amended at 65 FR 36031, June 6, 2000]

### 49.602 Forms for settlement of terminated contracts.

The standard forms listed below shall be used for settling terminated prime contracts. The forms at 49.602-1 and 49.602-2 may also be used for settling terminated subcontracts. Standard forms are illustrated in subpart 53.3.

#### 49.602-1 Termination settlement proposal forms.

(a) Standard Form 1435, Settlement Proposal (Inventory Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on an inventory basis (see 49.206-2(a)).

(b) Standard Form 1436, Settlement Proposal (Total Cost Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on a total cost basis (see 49.206-2(b)).

(c) Standard Form 1437, Settlement Proposal for Cost-Reimbursement Type Contracts, shall be used to submit settlement proposals resulting from the termination of cost-reimbursement contracts (see 49.302).

(d) Standard Form 1438, Settlement Proposal (Short Form), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the total proposal is less than \$10,000 (see 49.206-1(d)).

#### 49.602-2 Inventory forms.

Standard Form (SF) 1428, Inventory Disposal Schedule, and SF 1429, Inventory Disposal Schedule—Continuation Sheet, shall be used to support settlement proposals submitted on the forms specified in 49.602-1(b) and (d).

[69 FR 17748, Apr. 5, 2004]

#### 49.602-3 Schedule of accounting information.

Standard Form 1439, Schedule of Accounting Information, shall be filed in support of a settlement proposal unless

the proposal is filed on Standard Form 1438, Settlement Proposal (Short Form) (see 49.206-1(e)).

#### 49.602-4 Partial payments.

Standard Form 1440, Application for Partial Payment, shall be used to apply for partial payments (see 49.112-1).

#### 49.602-5 Settlement agreement.

Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall be used to execute a settlement agreement (see 49.109-1).

### 49.603 Formats for termination for convenience settlement agreements.

The formats to be used for termination for convenience settlement agreements should be substantially as shown in this section (see 49.109). Termination contracting officers (TCO's) may, however, modify the contents of these agreements to conform with special termination clauses prescribed or authorized by their agencies (e.g., see 49.501 and 49.505(c)).

[48 FR 42447, Sept. 19, 1983, as amended at 72 FR 27389, May 15, 2007]

#### 49.603-1 Fixed-price contracts—complete termination.

[*Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts completely terminated.*]

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated \_\_\_\_\_.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the

Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6)(i) The Contractor has received \$\_\_\_\_\_ for work and services performed, or items delivered, under the completed portion of the contract. The Government confirms the right of the Contractor, subject to paragraph (7) below, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$\_\_\_\_\_ [insert net amount of settlement], arrived at by deducting from the sum of \$\_\_\_\_\_ [for proposals on an inventory basis insert gross amount of settlement; for proposals on a total cost basis, insert gross amount of settlement less amount shown in subdivision (6)(i) above], (A) the amount of \$\_\_\_\_\_ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest) and (B) the amount of \$\_\_\_\_\_ for all applicable property disposal credits [insert if appropriate, "and (C) the amount of \$\_\_\_\_\_ for all other amounts due the Government

under this contract, except as provided in paragraph (7) below"].

(iii) The net settlement of \$\_\_\_\_\_ in subdivision (ii) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and of all other demands and liabilities of the Contractor and the Government under the contract except as provided in paragraph (7) below.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

*[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.]*

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens." *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]*

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract

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termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective certified cost or pricing data.

(End of agreement)

[48 FR 42447, Sept. 19, 1983, as amended at 60 FR 37773, July 21, 1995; 60 FR 49723, Sept. 26, 1995; 75 FR 53150, Aug. 30, 2010]

### 49.603-2 Fixed-price contracts—partial termination.

*[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts partially terminated.]*

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated \_\_\_\_\_.

(b) The parties agree to the following:

(1) The terminated portion of the contract is as follows: *[specify the terminated portion clearly as to (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding]*.

(2) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(3) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the set-

tlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(4) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(5) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(6) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(7)(i) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$ \_\_\_\_\_ *[insert net amount of settlement]*, arrived at by deducting from \$ \_\_\_\_\_ *[insert gross amount of settlement]*, (A) the amount of \$ \_\_\_\_\_ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest) applicable to the terminated portion of the contract and (B) the amount of \$ \_\_\_\_\_ for all applicable property disposal credits.

(ii) The net settlement of \$ \_\_\_\_\_ in subdivision (i) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the terminated portion of the contract, except as provided in subparagraph (8) below.

(iii) Upon payment of the net settlement of \$ \_\_\_\_\_, all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or carry out other undertakings concerning the terminated portion of the contract shall cease; *provided*, that nothing in this agreement shall impair or affect any